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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,410	08/05/2003	Jorge A. Groiso	P/1825-11	7948
7590 06/19/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8403				
EXAMINER				
ARAJ, MICHAEL J				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
06/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/634,410

Applicant(s)

GROISO, JORGE A.

Examiner

MICHAEL J. ARAJ

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21, 22 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) 6-18 and 27-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Groiso (U.S. Patent No. 5,993,476).

Groiso discloses a clip that has at least two straight engagement legs (14), extending parallel to one another in a first direction (same direction the legs point) including respective distal bridging tips and respective proximal insertion tips as well as a connecting bridge coupled to the distal bridging tips of the two engagement legs that are at least two elongated sections (40) extending along side on another generally in a second direction substantially perpendicular to the first direction. The elongated section having a non-linear outline having a curved shape (Fig. 1 below) and includes one of a depression and a dome (see Fig. 13). Also disclosed is that the engagement legs and the connecting bridges are constructed from a biocompatible material (Col. 4, Paragraph 2). Furthermore, the two elongated section includes respective bulges that together form a space of separation between elongated sections. Applying a force to the elongated sections of the clip in an area of the non-linear deformable region causes the proximal insertion tips to pivot which can be seen in figure 17. The force is selected from at least one to separate and to unite the two elongated sections. Also disclosed

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are the engagement legs that are provided with gripping surfaces (41) for frictionally engaging the bone tissue fragments

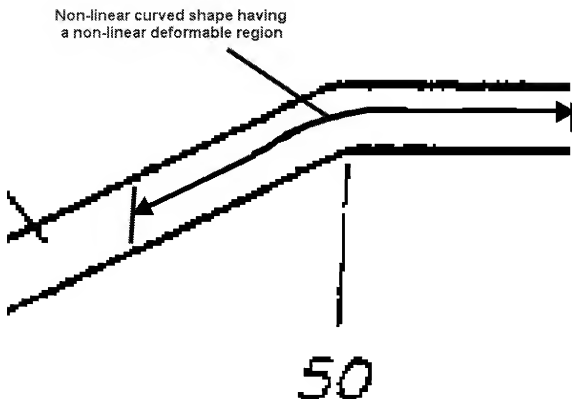


Fig. 1 View in a third direction (coming out of the page) perpendicular to said first and second directions

Response to Arguments

Applicant's arguments filed March 13, 2008 have been fully considered but they are not persuasive. The amendments made to claims 1 and 21 do not overcome the prior art and do not place the case into condition for allowance. Groiso ('476) shows a curved region in Figure 1 above, which is a blown up version of Figure 13. This specific section shows what is being claimed in the independent claims. Therefore the

elongated sections are considered to be having a non-linear outline having a curved shape forming a non-linear deformable region when viewed from the side of the device as seen in Fig. 1 above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL J. ARAJ** whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/
Examiner, Art Unit 3733
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733

Application Number**Application/Control No.**

10/634,410

Examiner

MICHAEL J. ARAJ

**Applicant(s)/Patent under
Reexamination**

GROISO, JORGE A.

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